

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARO C. WEILBURG and
MARIA T. WEILBURG,

Plaintiffs,

-v-

5:22-CV-432

NICHOLAS JACOBSON *et al.*,

Defendants.

APPEARANCES:

DARO C. WEILBURG &
MARIA T. WEILBURG
Plaintiffs, Pro Se
4899 Bear Path Road
Munnsville, NY 13409

DAVID N. HURD
United States District Judge

OF COUNSEL:

ORDER ON REPORT & RECOMMENDATION

On May 4, 2022, *pro se* plaintiffs Daro Weilburg and Maria Weilburg (collectively “plaintiffs”) filed this action alleging defendants violated their rights by attempting to evict them from an apartment. Dkt. No. 1. Along with their complaint, plaintiffs sought leave to proceed *in forma pauperis* (“IFP Applications”). Dkt. Nos. 2, 3; *see also* Dkt. Nos. 11, 12.

On May 18, 2022, U.S. Magistrate Judge Andrew T. Baxter granted plaintiffs' IFP applications, construed the complaint as asserting civil rights claims under 42 U.S.C. § 1983 and the Fair Housing Act ("FHA"), and advised by Report & Recommendation ("R&R") that the complaint be dismissed as to certain defendants but not others. Dkt. No. 13.

As Judge Baxter explained, "plaintiffs' submissions are sufficient to order service of the complaint on [defendant Richard] Castellane" as to the housing discrimination claim under the FHA. Dkt. No. 13 at 7.¹ However, Judge Baxter determined that plaintiffs had failed to allege viable claims against any of the other named defendants. *Id.* Even so, in light of their *pro se* status Judge Baxter recommended that plaintiffs be given a limited opportunity to amend their complaint as to two of these defendants. *Id.*

On June 7, 2022, this Court adopted Judge Baxter's R&R over plaintiffs' objections. Dkt. No. 15. Plaintiffs' complaint was dismissed with leave to amend as against defendants Nicholas Jacobson and The Law Firm of Bond, Schoeneck & King. *Id.* However, plaintiffs' complaint was dismissed without leave to amend as to defendants Robert Altman, Jane Doe Jacobson, and the remaining Does. *Id.*

¹ Pagination corresponds to CM/ECF.

On July 8, 2022, plaintiffs filed an amended complaint against defendants Nicholas Jacobson and The Law Firm of Bond, Schoeneck & King. Dkt. No. 16. While that pleading was under review by Judge Baxter, plaintiffs moved for a temporary restraining order (“TRO”). Dkt. No. 17.

That motion was denied, Dkt. No. 18, and so was the motion for reconsideration that followed, Dkt. Nos. 19–20. Plaintiffs then filed a second amended complaint on August 5, 2022. Dkt. No. 21.

On August 23, 2022, Judge Baxter advised by R&R that plaintiffs’ second amended complaint (Dkt. No. 21) be dismissed and that plaintiffs be given thirty days to amend their pleading on a limited basis in accordance with his prior instructions. Dkt. No. 22.

Plaintiffs have not filed objections, and the time period in which to do so has expired. *See* Dkt. No. 22. Upon review for clear error, the R&R will be accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

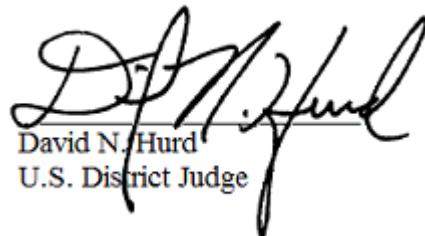
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiffs’ second amended complaint (Dkt. No. 21) is DISMISSED;
3. Plaintiffs have thirty days in which to amend their complaint to the extent specifically authorized in Judge Baxter’s May 18, 2022 Order and Report-Recommendation;

4. Any amended pleading must be a **COMPLETE PLEADING, WHICH WILL SUPERSEDE THE ORIGINAL;**
5. Plaintiffs must include all the remaining facts and causes of action in any amended pleading they choose to file; and
6. Any amended pleading shall be RETURNED to Judge Baxter for review and any further orders relating to service.

IT IS SO ORDERED.

Dated: September 12, 2022
Utica, New York.



David N. Hurd
U.S. District Judge